APPENDIX.

Sources of figures given on p. 3 above.

The estate of Lloyd T. Boyd consisted of 500 shares of Journal stock which was worth $80,000 in 1914,[1] by 1932 was earning $49,604 on each 166 shares,[2] and which sold in 1936 at $3500 a share.[3]

The balance of the estate of Lloyd T. Boyd consisted of assets valued in 1914 as follows:

One bond of Milwaukee Golf Club	$450.
Watch and stick pins	35.
1913 Cadillac automobile	700.
Household furniture	795.[4]

and some land which was sold by Mrs. Boyd for $4000 in 1927.[5]

The Golf Club bond might have appreciated to par by November 1931—though that was right in the depression and it is hardly likely—but let us put it down at ..... $1,000.

The jewelry was certainly worth no more than.. $ 35.

The 1913 Cadillac was certainly worthless in 1931 but if Mrs. Boyd had sold it for $700 she might still have had the ..... $ 700.

And the household furniture certainly did not increase over its 1914 value..... $ 795.

So at most the value of the estate, outside of the Journal stock was $6,530 as against upwards of $1,500,000 for the stock. Mrs. Boyd was 70 years old in 1939.[6] She was, accordingly, 62 in 1931. Her life interest in the 166 shares of

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[1] Finding: R. 9.

[2] Testimony of E. Evans, R. 46.

[3] Testimony of E. Evans, R. 46.

[4] R. 51.

[5] Stip., R. 47. Testimony of E. Evans, R. 48.

[6] Testimony of K. Morehead, R. 50.

Journal stock put into each trust was $175,610.40.[1] Each daughter surrendered her rights in her father's estate (other than in the 168 shares of Journal stock remaining in Mrs. Boyd's hand) which, on the same basis, were worth not more than $1,980.66.[2] Hardly enough of a purchase price to eliminate the idea of donative intent on the mother's part!

And of course the creation of trusts of their remainders was consideration of a sort for the creation of trusts of her life estate. Like the promise of A to donate a certain amount to a college if others will agree to donate similar amounts. But that would not entitle A to an income tax deduction for charitable contributions of the amounts furnished by the others. Each would still be making his own gift. And Mrs. Boyd, on the one hand, and her daughters, on the other, were each creating a trust of her own interest in the stock, even if such creation was conditioned upon similar action by the other.

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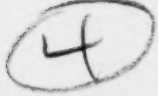
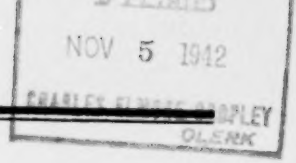
[1] Taking each block of 166 shares as worth $500,000 (each trust actually collected between January 1, 1932, and December 31, 1938, over $445,000—Testimony of E. Evans, R. 46-47) and applying the 4 per cent rule of the Treasury Regulations (see *Smith* v. *Shaughnessy*, 40 F. Supp. 19) and the 4 per cent table published by the Treasury in Regulations 80, Art. 13, table A, the value of the life estate of Mrs. Boyd in each block of 166 shares was $20,000 x 8.78052 or $175,610.40.

[2] $6,350 ÷ 2 x .62383, see same table.





IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 107.

MARY BOYD EVANS, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE.

No. 108.

KATHARINE BOYD MOREHEAD, *Petitioner,*

v.

COMMISSIONER OF INTERNAL REVENUE.

On Petition for Writs of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

PETITION FOR RECONSIDERATION OF ORDER DENYING PETITION FOR CERTIORARI.

JAMES S. Y. IVINS,
Attorney for Petitioners.

Of Counsel:

IVINS, PHILLIPS, GRAVES & BARKER,
Southern Building,
Washington, D. C.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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The petitioners herein, by their undersigned counsel, respectfully show:

The petition for certiorari herein was filed on May 29, 1942 and numbered 1271 and 1272 for the 1941 October Term. The brief in support of the petition accompanied the petition. Respondent served his brief in opposition on

petitioners' counsel on June 23, 1942. Because it was recess time and the rules did not require immediate reply, petitioners' counsel delayed filing his reply brief until after a summer vacation. The reply brief was filed on September 12, 1942.

Petitioners' counsel fears that possibly the petition and respondent's brief had been assigned to a Justice for study before receipt of the reply brief, and that the reply brief was overlooked in the press of work at the beginning of the 1942 term, or that in that press of work the Court failed to notice that:

(1) There are *real* conflicts between the decision of the Circuit Court of Appeals and decisions of other Circuit Courts of Appeals and of this Court, which conflicts were shown in detail by parallel column presentation in petitioners' reply brief, after respondent had disposed of them cavalierly by the mere assertion that the conflicting cases presented different situations from those in the case at bar. These are conflicts which should be resolved by this Court. It is not at all unusual for this Court to grant certiorari where two decisions conflict "in principle"—and almost never does it have before it conflicting decisions where all the facts were identical.

(2) Under the first specification of error—the Circuit Court of Appeals made a finding of fact upon an issue of fact upon which petitioners were entitled to have had a decision from the Board of Tax Appeals which heard the evidence. The Board had considered it unnecessary to decide this fact, because it was deciding in favor of petitioners on another ground. In reversing the Board on such other ground the Circuit Court of Appeals, under decisions of this Court, should have remanded the case to the Board for finding on the undecided fact rather than substitute itself as trier of the fact. The injustice is aggravated by the fact that the Circuit Court of Appeals made its finding on a record in which a large part of the evidence had been omitted in printing because it was not expected that the Circuit

Court of Appeals would regard itself as a trier of facts, but was expected that if the Court found the record insufficient for affirmance it would at least remand the cause to the Board for further findings on the issue of fact which the Board had failed to resolve.

(3) Respondent's brief, as shown on pages 2 and 3 of petitioners' reply brief, made several indefensible departures from the record facts.

WHEREFORE, petitioners respectfully pray the Court to reconsider its denial of the petition herein, to reexamine the briefs herein—especially petitioners' reply brief, and to grant the petition.

JAMES S. Y. IVINS,
Attorney for Petitioners.

c/o IVINS, PHILLIPS, GRAVES & BARKER,
Southern Building,
Washington, D. C.

November 5, 1942.

I hereby certify that the foregoing petition is presented in good faith and is not filed for purposes of delay.

JAMES S. Y. IVINS,
Attorney for Petitioners.